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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,766	12/28/2000	Brian B. Egan	7000-526	8660
27820 7590 10/06/2008 WITHROW & TERRANOVA, P.L.L.C. 100 REGENCY FOREST DRIVE SUITE 160 CARY, NC 27518				
EXAMINER				
HAN, CLEMENCE S				
ART UNIT		PAPER NUMBER		
2616				
MAIL DATE		DELIVERY MODE		
10/06/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/750,766

**Applicant(s)**

EGAN ET AL.

**Examiner**

CLEMENCE HAN

**Art Unit**

2616

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-18 and 20-23 is/are rejected.
- 7) ☒ Claim(s) 9, 19 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1-6, 10-18 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kroll (US 6,700,895) in view of Welin (US 6,975,629).

Regarding to claim 1, 14 and 20, Kroll teaches a method of voice optimization in a packet switched network, comprising: initializing end-point devices on a network, wherein the initializing comprises setting default parameters for the end-point devices with respect to jitter buffer size 210 and performing one or more tests to determine an optimum configuration for the end-point device (Column 7 Line 29-32); measuring performance parameters of the network external to the end-point devices 212-280; and evaluating whether the measured performance parameters signify that a connection to the network is below a desired level of operation 194 and, if so, adjusting the default parameters for the end-point devices based on the evaluating 196. Kroll, however, does not teach initializing default parameters with respect to choice of preferred CODEC and number of voice samples per packet. Welin teaches initializing default parameters with respect to choice of preferred CODEC and number of voice samples per packet (Column

18 Line 4-14). It would have been obvious to one skilled in the art to modify to initialize default parameters with respect to choice of preferred CODEC and number of voice samples per packet as taught by Welin in order to optimize the system in real time (Column 18 Line 20-25).

Regarding to claim 2, 18 and 23, Kroll teaches the adjusting includes performing functions that are selected from a group consisting of re-negotiating a CODEC connection, re-setting of parameters for the packet size and re-setting the jitter buffer 196.

Regarding to claim 3, 5, 11, 15 and 21, Kroll teaches the performance parameters being measured are selected from a group consisting of throughput, latency, packet loss, bandwidth, number of network hops to the end-point devices, round trip delay and any combination thereof 280.

Regarding to claim 4, 6, 16, 17 and 22, Kroll teaches the measuring is performed with at least one tool selected from a group consisting of a ping tool, a network trace tool and a packet loss measurement tool (Column 2 Line 36-39).

Regarding to claim 10, Kroll teaches measuring and evaluating existing performance parameters with respect to quality of connection 212-280, the initializing being based on the evaluating 196.

Regarding to claim 12, Kroll teaches evaluating the measured performance parameters with respect to quality of connection 212-280 and performing the adjusting as a result of the evaluating 196.

Regarding to claim 13, Kroll teaches the adjusting is carried out during transmission of media to the end-point devices (Column 6 Line 55-64).

3. Claim 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kroll in view of Welin as applied to claim 1 and 2 respectively above, and further in view of Shah (US 7,307,980).

Regarding to claim 7 and 8, Kroll teaches adjusting the default parameters for the end-point devices based on the evaluating 196. Kroll in view of Welin, however, does not teach explicitly the adjusting is manually initiated by a user. Shah teaches adjusting manually initiated by a user (Column 7 Line 65 – Column 8 Line 34). It would have been obvious to one skilled in the art to modify Kroll in view of Welin to have the adjust manually initiated by a user as taught by Shah in order to allow adjustment based on the network, either manually or automatically (Column 3 Line 31-36).

***Allowable Subject Matter***

4. Claim 9, 19 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. Applicant's arguments filed 06/12/2008 have been fully considered but they are not persuasive. In response to page 3-4, the applicant argues that Kroll does not teach performing one or more test to determine an optimal configuration for the end-point devices. Kroll teaches performing one or more test (Figure 7A and 7B, process 200 in

Figure 6) to determine an optimal configuration (optimal buffer size) for the end-point devices. In response to page 4-5, the applicant argues that Kroll does not teach the measured performance parameter being external to the end-point devices. Kroll teaches the measured performance parameter being external to the end-point devices (packet arrival statistics are external to the end-point devices, see Abstract). In response to page 5-6, the applicant argues that Kroll does not teach evaluating whether a connection to the network is below a desired level of operation. Kroll teaches evaluating whether a connection to the network is below a desired level of operation (too much frame loss) with buffer size X (step 194 in Figure 6). Therefore, the examiner contend that the prior arts in the record teaches all the limitations as cited in the claims.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CLEMENCE HAN whose telephone number is (571)272-3158. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on (571) 272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. H./  
Examiner, Art Unit 2616

/FIRMIN BACKER/  
Supervisory Patent Examiner, Art Unit 2616